



www.dewittross.com

Capitol Square Office
Two East Mifflin Street
Suite 600
Madison, WI 53703-2865
Tel 608-255-8891
Fax 608-252-9243

West Office
8000 Excelsior Drive
Suite 401
Madison, WI 53717-1914
Tel 608-831-2100
Fax 608-831-2106

Metro Milwaukee Office
13935 Bishop's Drive
Suite 300
Brookfield, WI 53005-6605
Tel 262-754-2840
Fax 262-754-2845

Please respond to: Capitol Square Office
Direct line: 608-252-9325

MEMORANDUM

TO: DuWayne Johnsrud
Todd Ambs
Jill Jonas
Mike Lemke

FROM: Ron Kuehn

RE: Groundwater Advisory Committee—Suggested Agenda

DATE: June 23, 2005

Thanks to Jill and Mike for setting up a time for us to discuss an agenda for the Groundwater Advisory Committee. I understand that we will be discussing this, by phone, on Friday, June 24 at 11 a.m.

I have taken a look at the groundwater statute to assess exactly what it is that we have been asked by the Legislature to achieve. We have briefly discussed this at our two prior meetings as well.

In view of the statutory mandate, let me offer some thoughts as to the three categories of action that I see us being obligated to pursue. I would also like to suggest an order in which to pursue them.

From the materials that we have reviewed at the first two meetings, it is clear that the areas of greatest need of attention are the groundwater managements areas and those other areas of the state that might be designated as groundwater management areas. We have already put in two years' worth of work and helped to pass a statute for the groundwater protection component. I would, therefore, suggest that we begin work in the areas that need the greatest amount of attention first (groundwater management areas, and other potential management areas of the state) and after completing that work, then turn to the remainder of the work necessary to put the finishing touches on what has already been achieved in the groundwater protection areas.

June 23, 2005

Page 2

I. Groundwater Management Areas.

The statute at Wis. Stat. § 281.34(9)(a) designates two groundwater management areas:

- a. Brown County, including areas surrounding Brown County; and
- b. Waukesha County, including all of the adjacent cities.

Section (f)2. directs us to address two subjects for these two management areas:

1. **Create a mitigation program** like that which was developed for groundwater protection under § 281.34(a)(d), and
2. **Develop administrative rules** to implement the legislation designing this mitigation program.

This is a very significant project and, as noted in the discussion of our first two meetings, addresses the areas of greatest need in our state. I therefore suggest that we focus first on this subject area, advance it substantially, and then move on to the second subject area.

II. Other Areas of the State (Section (e)2.).

The statute gives us several directives regarding what it calls “other areas of the state” that may need management area-type attention

1. **We are to develop a mitigation program** like that already created for the groundwater protection areas under § 281.34(a)(d).
2. We are to develop **a plan for management of groundwater** in these others areas of the state.
3. We are to **determine what “other areas” are to be designated** as groundwater management areas.
4. We are to **develop a coordinated strategy** for addressing groundwater management issues in these “other areas” that would include:
 - a. Local units of government.
 - b. Regional planning commissions.

We are also to devise a plan for removing from the designation of other groundwater management area the areas that we determine to be in that category. Presumably the statute intends that once mitigation has been successfully achieved, then these areas would be deleted from the “other areas” of the state in need of management.

June 23, 2005

Page 3

Like the requirements in Section I., section (f), which provides the guidelines for these other areas, suggests that we need **statutes and administrative rules to implement** the management program for these other areas of the state.

I would suggest that we address this second area subsequent to addressing the groundwater management areas already designated in the statute.

III. Other Duties of the Committee.

After completing our work on I., and II., I would suggest we then turn to this implementation plan for the groundwater protection areas. We are to provide a report by December 31 that includes the following:

1. The **results** of our **review of the implementation of groundwater protection**.
2. **Recommendations for change in regulations** related to:
 - a. Wells in groundwater protection areas that have a water loss of 95% or more and
 - b. Wells in the groundwater protection areas that have a significant environmental impact on a spring.
3. We **are** to make recommendations regarding the **definition of a spring**.
4. We are to make recommendations for a **strategy for authorizing the regulation** of high capacity wells in groundwater protection areas.
5. We are to address the issue of **general permits** for high capacity wells in groundwater protection areas.
6. We **are** go propose factors to consider in determining whether a high capacity well causes a **significant environmental impact**.

IV. Conclusion.

I have begun to do some research in two basic areas that I think would be of substantial assistance to us in addressing our obligations under items I. and II. above.

June 23, 2005

Page 4

1. Assessment of actions that have been taken by other states and municipalities around the United States and in some areas of the world to address substantial reductions of groundwater availability and quality. I think it would be advantageous to us to understand, to the degree possible, what others have done to address these kinds of issues. Some of these previously-adopted ideas and concepts may be valuable in being adapted to the unique circumstances that are being experienced in our groundwater management areas in Wisconsin. I'm looking at AZ, CA, NY, FL and CO as well as foreign countries like Australia.

2. Make a determination regarding the volume of water use attributable to various sectors of the economy in each of the management areas. For example, some preliminary information that I have secured from the USGS Water Survey of 2000, suggests that 80% of the water used in the Brown County management area is attributable to thermoelectric, public utility use. However, that information seems somewhat flawed because I doubt that is entirely a consumptive use. Nonetheless, it is a startling high number and is reported by a very reliable source. Nationally, the thermoelectric use is 48% of fresh water consumed.

3. It appears that a mitigation plan for Brown County may differ substantially from one for Waukesha. For example, in Brown County the 2000 report indicates 70 million gallons a day for industrial uses but less than 3 million a day for industrial use in Waukesha County.